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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,406	04/13/2004	Matthew X. Jecker	578-5-1	3236
7590	08/14/2006		EXAMINER	
Jonathan A. Bay Suite 314 333 Park Central East Springfield, MO 65806			COZART, JERMIE E	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/823,406

**Applicant(s)**

JECKER, MATTHEW X.

**Examiner**

Jermie Cozart

**Art Unit**

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of claims 1-9 and 12-18 in the reply filed on 7/24/06 is acknowledged.

***Specification***

2. The disclosure is objected to because of the following informalities: On page 2, *line 1*, "used cover" is objected to because it is not grammatically correct in the used context, therefore it is suggested to change "used cover" to - -used to cover- -. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 2-9 and 12-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Regarding claims 2, 3, and 12, the phrase "apron-like fashion treatment" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "apron-like"), thereby rendering the scope of the claim(s) unascertainable.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view Esfratis et al. (5,546,708).

AAPA discloses at page 3, lines 17-24 of the specification, discloses remodeling a subsisting countertop by casting a concrete mix overlay thereupon in situ by providing a subsisting countertop and pouring concrete in place over the subsisting countertop. AAPA at page 13, lines 10-17 of the specification that polymer modified cementitious is commercially available.

AAPA, however, does not disclose the following: permanently attaching lath to the subsisting countertop; temporarily attaching edging forms or flow checks around all the free edges of the subsisting countertop for the purpose of checking the flow of a casting compound to the height of a given rise; pouring the polymer-modified cementitious casting compound over the countertop as well as the lath, the outward spill of which is checked by the edging forms and flow checks, until about the level of the given rise is reached; or removing the edging forms and flow checks optionally within a day.

Esfratis discloses permanently attaching lath (58) to a subsisting substrate (44), temporarily attaching dams/edging forms (82) or flow checks around all the free edges of the subsisting substrate (44) for the purpose of checking the flow of a casting compound to the height of a given rise, pouring water based slurry of cementitious casting compound (col. 8, lines 1-31) over the substrate as well as the lath (58), the

outward spill of which is checked by the dams/edging forms (82) and flow checks, until about the level of the given rise is reached. Esfratis also discloses removing the edging forms (82) and flow checks optionally within a day (col. 8, lines 32-37). Esfratis thereby provides a precisely level surface possessing substantial rigidity. *See column 3, line 51 – column 8, line 44, and figures 1-7 for further clarification.*

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to permanently attach lath to the subsisting countertop of AAPA, temporarily attach edging forms or flow checks around all the free edges of the subsisting countertop of AAPA for the purpose of checking the flow of a casting compound to the height of a given rise, to pour the polymer-modified cementitious casting compound over the countertop as well as the lath, until about the level of the given rise is reached, and to remove the edging forms and flow checks optionally within a day, in light of the teachings of Esfratis, in order to provide a precisely level surface possessing substantial rigidity.

***Allowable Subject Matter***

8. Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 3-9 and 12-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

**Conclusion**


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached PTO-892 are cited so show the formation of countertops.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 571-272-4528. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on 571-272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 6, 2006

  
JERMIE E. COZART  
PRIMARY EXAMINER